

REMARKS

This application has been reviewed in light of the Office Action mailed on April 4, 2008. Claims 1, 2 and 5-9 are pending in the application with claim 1 being in independent form. By the present amendment, claim 1 has been amended. No new matter is believed to be introduced by the present amendment. In view of the amendment above and the remarks to follow, reconsideration and allowance of this application are respectfully requested.

Claims 1, 8, and 9 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,954,259 to Viola et al. (hereinafter "Viola") in view of U.S. Patent No 3,859,996 to Mizzy et al. (hereinafter "Mizzy"). It is respectfully submitted that the present invention as claimed is patentably distinguishable over Viola in view of Mizzy.

Amended claim 1 recites a surgical stapler comprising, *inter alia*, an adapter yoke mechanically coupled to said clamping handle such that movement of said clamping handle from the first position to the second position translates said adapter yoke within said housing and in mechanical cooperation with a lead screw disposed within said housing to actuate the tool assembly to clamp tissue. In addition, claim 1 has also been amended to add the limitation that the clamping handle and the pressure sensitive trigger operate independently from one another. Viola, taken in any combination with Mizzy, fails to disclose or suggest the surgical stapler of claim 1, having an adapter yoke mechanically coupled to said clamping handle.

Viola discloses a surgical apparatus for applying surgical fasteners to body tissue. The elements in Viola characterized in the Office Action as the "clamping handle" and "adapter yoke" recited in claim 1 are trigger 44 (Viola, col. 4, lines 46-48) and cartridge coupling 76 (Viola, col. 5, lines 62-63). Nowhere does Viola teach, disclose, or suggest that the cartridge coupling 76 is mechanically coupled to the trigger 44, as required by amended claim 1. In

contrast, the cartridge coupling 76 of Viola “is configured to connect at its distal end to the proximal end of an axial drive screw 78 [and] is detachably connected at its proximal end to a shaft coupling 140 which is connected to the distal end of drive shaft 42.” (Viola, col. 5, lines 63-67). Moreover, Viola teaches away from the recited adapter yoke being mechanically coupled to the clamping handle in that the trigger 22 is depressed to actuate motor assembly 22, and thereby cause gear set 24 to transfer rotational motion to drive shaft 42, which, in turn, transfers rotational motion to axial drive screw 78 through couplings 76 and 140. (Viola, col. 7, lines 59-63). Thus, there is no need for the cartridge coupling 76 to be coupled to the trigger 44 because no manual actuation of the cartridge assembly 16 is performed by the device of Viola. Rather, the cartridge assembly 16 of Viola is actuated by the motor assembly 22 via the drive shaft 42 to control both the clamping of tissue and the firing of staples concomitantly.

It is respectfully submitted that Mizzy fails to cure the above-described deficiencies of Viola. Mizzy discloses an “injector apparatus of the pressure jet type including a pressure sensitive actuating mechanism....” (Column 2, lines 1-8). The apparatus disclosed in Mizzy is not a surgical stapler device and thus does not contain a clamping handle. Therefore, Viola taken in any proper combination with Mizzy discloses a trigger which actuates a motor assembly to control both the clamping of tissue and the firing of staples. Applicant, on the other hand, discloses a clamping handle that is mechanically coupled to an adapter yoke and which operates independently from a pressurized trigger to translate the adapter yoke within a housing to actuate a tool assembly.

Furthermore, Mizzy does not disclose “a pressure sensitive trigger which regulates the advancement of said roll nut along said lead screw which, in turn, regulates the speed at which said surgical fasteners are deformed.” The purpose of the pressure-sensitive mechanism

disclosed by Mizzy is to avoid an inadvertent actuation of the injector device and not to regulate the speed of forming surgical fasteners.

Accordingly, in view of the foregoing amendments and remarks, withdrawal of the rejection of claim 1 under 35 U.S.C. §103(a) as being unpatentable over Viola in view of Mizzy is respectfully requested.

Since claims 8 and 9 depend from claim 1 and therefore contain all the limitations of claim 1, it is respectfully requested, in view of the foregoing amendments and remarks, that the rejection of each of claims 8 and 9 under 35 U.S.C. §103(a) as being unpatentable over Viola in view of Mizzy be withdrawn.

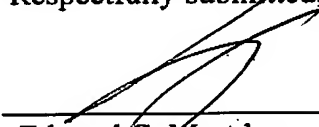
Claims 2 and 5-7 were rejected under 35 U.S.C. §103(a) as being unpatentable over Viola in view of Mizzy and in further view of U.S. Patent Application No. 2002/0096550 to Green et al (hereinafter "Green").

Since claims 2 and 5-7 depend from claim 1 and therefore contain all the limitations of claim 1, it is respectfully requested, in view of the foregoing amendments and remarks, that the rejection of each of claims 2 and 5-7 under 35 U.S.C. §103(a) as being unpatentable over Viola in view of Mizzy and further in view of Green is withdrawn. Further, Green is devoid of any disclosure, teaching, or suggestion of an adapter yoke that is mechanically coupled to a clamping handle and the clamping handle operating independently from a pressure sensitive trigger.

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presently pending in the application, namely Claims 1, 2, and 5-9, are believed to be in condition for allowance.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call the Applicant's undersigned attorney at the Examiner's convenience.

Respectfully submitted,



Edward C. Meagher
Reg. No. 41,189
Attorney for Applicant

Carter, DeLuca, Farrell & Schmidt, LLP
445 Broad Hollow Road
Suite 225
Melville, New York 11747
Tel.: (631) 501-5700
Fax: (631) 501-3526

Mailing Address:
Chief Patent Counsel
Covidien
60 Middletown Avenue
North Haven, CT 06473